143

TRANSCRIPT OF RECORD

152033

Supreme Court of the United States

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 24, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 224

OSAKA SHOSEN KAISHA LINE, CLAIMANT OF THE STEAMSHIP "SANTOS MARU", PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1936.

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Admiralty. No. 316

UNITED STATES OF AMERICA

vs.

S. S. SANTOS MARU, Her Engines, Tackle, Etc.

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed December 6, 1935

To the Honorable United States District Clerk for the Southern District of Texas:

You will please make up the record to be transmitted to the United States Circuit Court of Appeals, for the Fifth Circuit, which shall contain:

1. Præcipe.
2. Libel.
3. Claimant's Bond to Abide Decree.
4. Answer to Claimant Respondent.
5. Respondent's Motion for Finding and Judgment.
6. Findings of Fact and Conclusions of Law under Admiralty Rule 46½.
7. Final Decree.

[fols. 2 & 3] 8. Notice of Appeal with Acceptance of Service Thereon.

9. Petition for Appeal.
10. Order Allowing Appeal.
11. Assignment of Errors.
12. Consent of all Parties to hearing of case at New Orleans, Louisiana, instead of Fort Worth, Texas.
13. Stipulation as to Finding of Facts.
14. Certificate of Clerk.

Douglas W. McGregor, United States Attorney.
Brian S. Oden, Assistant United States Attorney.

I hereby certify that copy of the foregoing præcipe was served on Royston & Rayzor, Houston, Texas, Proctors for Respondent, this the 6th day of December, 1935.

Brian S. Odem, Assistant United States Attorney.

Service of receipt of copy of this præcipe acknowledged this 6th day of December, 1935.

Royston & Rayzor, Proctors for Respondent.

[File endorsement omitted.]

[fol. 4] [Caption omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

LIBEL—Filed January 11, 1935

[fol. 5] Now comes the United States of America, by Brian S. Odem, Assistant United States Attorney in and for the Southern District of Texas, on behalf of the United States of America, a sovereign body politic, and files this libel against the Steamship "Santos Maru," her engines, boilers, and machinery, now lying in port at Houston, Texas, district aforesaid, same being brought upon the suggestion of the Attorney General of the United States at the request of the Commissioner General of Immigration of the United States of America, and, for cause, represents unto the Court as follows:

I

That the S. S. "Santos Maru" belongs to the Osaka Shosen Kaisha Line, their agent being the Gulf Shipping Company, Galveston, Texas, and that on or about the nineteenth day of June, 1932, the owners, masters, officers and agents of the S. S. "Santos Maru," in Galveston County, Texas, within the maritime jurisdiction of this Court, circuit, district and division aforesaid, violated Section 146, Title 8, United States Code Annotated; that is to say, that the S. S. "Santos Maru" being in territorial waters of the United States and within the jurisdiction of this Court in Galveston County, Texas, had on board one Salvatore

Sprovieri, an alien passenger en route from Brazil to Japan, who was not then entitled to enter the United States of America at any time or place other than as designated by immigration officers of the United States; that the said owners, masters, officers and agents of the S. S. "Santos Maru" had on or about the eleventh of June, 1932, been duly and properly notified in writing, as provided by law, to detain on board for all United States ports the said Salvatore Sprovieri; that notwithstanding said notice, the owners, masters, officers and agents of the S. S. "Santos [fol. 6] Maru" did not take the necessary and proper precautions in the premises to detain the said Salvatore Sprovieri on board said S. S. "Santos Maru" and that he was thereby negligently permitted by the aforesaid owners, masters, officers and agents to enter and land in the United States of America at Galveston, Texas, on or about the nineteenth day of June, 1932, the same being at a time and place not designated by the Immigration Officers of the United States of America.

II

The said alien, Salvatore Sprovieri, at the time of landing in the United States of America had no right to enter and land in the United States of America in the manner aforesaid, and the owners, masters, officers and agents of the S. S. "Santos Maru," which brought the alien Salvatore Sprovieri to the United States, did not present the said Salvatore Sprovieri to the Immigration Authorities of the United States at the time and place designated by the Immigration officers of the United States.

III

That in the opinion of the Secretary of Labor, it has been found impractical and inconvenient to proceed against the masters, owners, officers and agents of the S. S. "Santos Maru" in criminal proceedings for the violation aforesaid.

IV

That by reason of all the foregoing allegations, the owners, masters, officers and agents of the S. S. "Santos Maru" are liable to the United States for a penalty of One Thou- [fol. 7] sand Dollars ($1,000.00); that said penalty is now owing and unpaid.

V

That by reason of all the foregoing allegations, such penalty of One Thousand Dollars, now due and owing to the United States, is a lien upon the S. S. "Santos Maru," whose owners, masters, officers and agents had violated the provisions of Section 146, Title 8, United States Code annotated in the manner and form aforesaid.

VI

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said S. S. "Santos Maru"; that the Court issue its warrant of seizure for the said S. S. "Santos Maru" and that monition issue and that upon final hearing herein the United States have its decree for its debt and penalty of One Thousand Dollars ($1,000.00) and that the S. S. "Santos Maru," her engines, boilers and machinery, be forfeited to the United States or sold, as the law directs, to satisfy its lien against said S. S. "Santos Maru."

Brian S. Odem, Assistant United States Attorney.

[fol. 8] *Duly sworn to by Brian S. Odem. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CLAIMANT-RESPONDENT—Filed January 23, 1935

To the Honorable Judges of said Court:

The answer of Osaka Shosen Kaisha Line, claimant of the Steamship "Santos Maru" by their agent the Gulf Shipping Company, Houston, Texas, to the libel of the United States of America against the ship "Santos Maru,"

her engines, tackle, etc., for a penalty under Section 146, Title 8, United States Code Annotated, alleges as follows:

I

The claimant is not in possession of sufficient information to answer the first article of said libel, and therefore claim-
[fol. 10] ant prays that libelant be put to strict proof of the allegations therein contained.

II

Claimant is not possessed of sufficient information to answer the second article of said libel and therefore again prays that libelant be put to strict proof of the allegations contained in said second article.

III

By way of special exception to the third article of said libel, claimant urges that said third article is defective and merely pleads a conclusion, and claimant respectfully requests that this Honorable Court require libelant to set forth the facts upon the basis of which the Secretary of Labor formed his opinion that it was impractical and inconvenient to proceed against the master, owners, officers and agents of the S/S Santos Maru in criminal proceedings for the alleged violation.

IV

Claimant denies the allegation of the fourth article of said libel with respect to the liability of the S/S Santos Maru for the penalty therein alleged, through claimant admits the alleged penalty is unpaid.

V

Claimant admits the jurisdiction of this Honorable Court and denies the other allegations contained in article 5 of said libel.

[fol. 11] Wherefore, premises considered, the claimant-respondent prays that the libel may be dismissed with costs and for such other and further relief as may be just.

Royston & Razor, Proctors for Claimant-Respondent.

Duly sworn to by J. Newton Rayzor. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

CLAIMANT'S BOND TO ABIDE DECREE—Filed January 15, 1935

Whereas a libel was filed in this Court, on the 12th day of January, in the year of our Lord, one thousand nine hundred and thirty-five, by United States of America against the S. S. Santos Maru, her engines, tackle, etc., for the reasons and causes in said libel mentioned, and a claim has been filed by Osaka Shosen Kaisha and the said claimant, and Maryland Casualty Co., his surety, the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimant, or his surety, execution may issue against their goods, chattels and lands, for the sum of One Thousand Dollars ($1,000.00),

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of One Thousand Dollars ($1,000.00), conditioned that the claimant above named shall abide by and pay the money awarded by the final decree, including costs of court, ren-
[fol. 13] dered in the cause by the Court or in case of appeal by the Appellate Court.

Osaka Shosen Kaisha, by T. Accasawa, Master, S. S. Santos Maru. Maryland Casualty Co., by Willard V. Jones, Attorney-in-fact. (Seal.)

Taken and Acknowledged, this 13th day of January, 1935, before me. John R. Brown, Notary Public in and for Harris County, State of Texas. (Seal.)

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONDENT'S MOTION FOR FINDING AND JUDGMENT—Filed June 21, 1935

To the Honorable Judge of said Court:

Now comes the respondent in the above entitled and numbered cause, after the conclusion of the evidence submitted

by libellant herein, and respectfully calling to the attention of the Honorable Court its demurrer to the evidence of the libellant, and expressly waiving its right within the time granted by the Court to present evidence in its own behalf, the respondent herein moves the Honorable Court for a finding and judgment in its favor, and that it have judgment in its behalf, together with a cancellation of the release bond herein previously given.

Royston & Rayzor, Proctors for Respondent.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER ADMIRALTY RULE 46½—Filed August 1, 1935

[fol. 16] Statement of the Case

This is a suit by the United States of America against Respondent under Section 146, Title 8, United States Code Annotated, to recover a penalty of $1,000 for allowing Salvatore Sprovieri, an alien passenger, to land in the United States.

The Facts

(a) The Steamship "Santos Maru" belongs to the Osaka Shosen Kaisha Line, and arrived at the port of New Orleans on June 11, 1932, with Salvatore Sprovieri, an alien passenger, on board. Such alien passenger was not bound for the United States and not entitled to enter the United States, but was en route from Brazil to Japan.

(b) Upon the arrival of such Steamship at New Orleans, the Immigration Officers there issued an Order in writing to the Steamship to hold the alien on board at all ports of the United States at which such Steamship might touch. This Order was duly served upon the Officers of the Steamship.

(c) On June 19, 1932, said Steamship arrived at the port of Galveston, Texas, in this Division and District, and the

said alien passenger was, by the negligence of such Steamship and its Officers and Crew, allowed to escape and land in the United States without the permission of the Immigration Authorities and in violation of the Law.

(d) Such Steamship Officers notified the United States. [fol. 17] Immigration Authorities of the escape of the said alien passenger, but such Steamship sailed before his arrest.

(e) Later such alien passenger was arrested in Galveston, Texas, and deported on another vessel of said line, and thereafter notice was given such Steamship Line of the intention of the Government to proceed against it and the "Santos Maru" for violation of said Section 146.

(f) It being in the opinion of the Secretary of Labor impractical and inconvenient to prosecute the matter criminally, this suit has been instituted under such Section 146 to recover a penalty of $1,000.

Conclusions of Law

1. This alien passenger was not bound for the United States, but was en route from Brazil to Japan, and under Taylor v. United States, 207 U. S. 120, 52 L. Ed. 130 Moffitt v. United States, 128 Fed. 375, 63 C. C. A. 117 (9 C. C. A. 1904), The President Adams (Dollar Steamship Line vs. Elting), 51 Fed. (2d) 1035, 1931 A. M. C. 1509 (2 C. C. A. 1931), The Alfonso XIII, etc., 53 Fed. (2d) 124 (S. D. New York 1931), and The Habana, etc., 63 Fed. (2d) 812 (2 C. C. A. 1933), Respondent is not liable.

Judgment for Respondent.

T. M. Kennerly, United States District Judge.

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Admiralty. No. 316

UNITED STATES OF AMERICA

versus

S/S SANTOS MARU, Her Engines, Boilers, Tackle, etc.; OSAKA SHOSEN KAISHA LINE, Claimant; MARYLAND CASUALTY COMPANY, Surety

FINAL DECREE—Filed August 28, 1935

The above entitled and numbered cause having come on for hearing in regular and due course, and the court having considered the pleadings, the evidence and the argument of proctors for libellant and claimant, and the court being of the opinion that the libel of the United States of America should be dismissed with prejudice;

It is, therefore, Ordered, Adjudged and Decreed by the Court, upon motion of Messrs. Royston and Rayzor, proctors for claimant, that the libel of the United States of [fol. 19] America should be, and the same hereby is, in all things dismissed with prejudice; the claimant, and its surety being in all things hereby relieved and discharged of all liability hereunder upon the payment by claimant or its surety of all costs by it incurred.

Done at Houston, Texas, this 27th day of August, A. D. 1935.

T. M. Kennerly, Judge.

Approved as to form: Royston & Rayzor, Proctors for Claimant. Douglas W. McGregor, United States Attorney for the Southern District of Texas, Proctor for Libellant.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed November 7, 1935

To the Honorable T. M. Kennerly, United States District Judge:

The above named libellant, United States of America, feeling aggrieved by the final decree of the Court filed herein, on August 28, 1935, in the above styled and numbered cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons set out in the Assignment of Errors filed herein and herewith and prays that its appeal be allowed and citation issued, as provided by law; and that a transcript of the record and proceedings upon which said decree was based be duly authenticated and sent to the United States Circuit Court of Appeals for the Fifth Circuit.

[fol. 21] Libellant further prays that a proper order relating to security of this appeal be entered.

Douglas W. McGregor, Brian S. Odem, Proctors for Libellant, United States of America.

[File endorsement omitted.]

[fols. 22 & 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 7, 1935

On this 7th day of November, 1935, came on to be heard the petition of libellant for appeal herein, and the Court being of the opinion that the same ought to be allowed, it is hereby ordered that an appeal be allowed from the decree entered herein in the above styled and numbered cause to the United States Circuit Court of Appeals for the Fifth Circuit, and that a certified transcript of the pleadings, stipulations and proceedings herein be transmitted to the

United States Circuit Court of Appeals for the Fifth Circuit.

It appearing that this appeal is by the United States of America no bond on appeal is required.

T. M. Kennerly, Judge.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Nov. 7, 1935

Now comes the United States of America, libellant and appellant in the above entitled and numbered cause, and files the following assignments of error on which, among others, it will rely on appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the decree rendered herein, which became final on August 28, 1935:

I

The Court erred in finding as a fact that the alien passenger Salvatore Sprovieri was, in fact, en route from Brazil to Japan.

II

The Court erred in failing to find as a fact that the alien Salvatore Sprovieri was bound for the United States and was not entitled to enter the United States.

[fol. 25]

III

The Court erred in concluding as a matter of law that the alien Salvatore Sprovieri was en route to Japan, and not bound for the United States.

IV

The Court erred in finding as a conclusion of law that Section 146, Title 8, United States Code Annotated, the section under which the proceeding was brought, is not applicable to "through passengers".

V

The Court erred in concluding as a matter of law that claimant or respondent is not liable under the provisions of Section 146, Title 8, United States Code Annotated, for the penalty provided therein.

Wherefore, by reason of the many prejudicial errors committed against libellant by the Honorable Trial Court, as hereinabove shown and assigned, and other errors apparent upon the face of the record herein, the appellant, United States of America, prays that the final decree heretofore rendered against it be reversed and the cause remanded for proper action in accordance with the order of this appellate court, and that justice be done.

Douglas W. McGregor, Brian S. Odem, Proctors for Libellant.

[fol. 26] [File endorsement omitted.]

[fol. 27] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

[Title omitted]

CONSENT OF ALL PARTIES TO HEARING OF CASE AT NEW ORLEANS, LA., INSTEAD OF FORT WORTH, TEXAS—Filed Nov. 27, 1935

To the Honorable Circuit Court of Appeals:

All parties to the above cause agree to the submission of this cause at New Orleans, Louisiana, instead of at Fort Worth, Texas.

Douglas W. McGregor, United States Attorney, Attorney for Appellant. Royston & Rayzor, Messrs. Royston & Rayzor, Attorneys for Appellees.

[fol. 28] [File endorsement omitted.]

[fols. 29 & 30] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

[Title omitted]

STIPULATION AS TO FINDINGS OF FACT—Filed Nov. 27, 1935

To the Honorable Circuit Court of Appeals:

All parties to the above cause hereby agree and stipulate that for the purposes of appeal herein the findings of fact made by the Honorable District Court herein shall be taken as true.

Douglas W. McGregor, United States Attorney, Attorney for Appellant. Royston & Rayzor, Messrs. Royston & Rayzor, Attorneys for Appellees, by Robert Eikel, Jr.

[File endorsement omitted.]

[fol. 31] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 32] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

[fol. 33] SUBMISSION OF CASE ON RECORD AND BRIEFS

Extract from the Minutes of June 1, 1936

No. 7978

UNITED STATES OF AMERICA

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU", et al.

On this day this cause was called, and, upon the joint request of counsel, was taken under submission by the Court upon the record and briefs on file.

[fol. 34] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7978

UNITED STATES OF AMERICA, Appellant,

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU," et al., Appellees

Appeal from the District Court of the United States for the Southern District of Texas

(June 10, 1936)

Before Foster, Sibley and Hutcheson, Circuit Judges

OPINION OF THE COURT—Filed June 10, 1936

FOSTER, Circuit Judge:

This is an appeal from a decree dismissing a libel in rem filed by the United States against the steamship Santos

Maru, to recover a penalty of $1,000.00, for negligence of the master and officers in allowing an alien to land in the United States, in violation of the Act of February 5, 1917, [fol. 35] § 10, amended by Act of May 26, 1924, § 27. (T. 8 U. S. C. A. § 146).*

The facts are not in dispute. The vessel arrived at New Orleans on June 11, 1932, in the course of a voyage from Brazil to Japan, with Salvatore Sprovieri, an alien, on board as a through passenger. An order was issued in writing by the immigration authorities at New Orleans and served on the officers of the ship, directing them to

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* "§ 146. Prevention of unauthorized landing of aliens; prima facie proof of landing. (a) It shall be the duty of every person, including owners, masters, officers, and agents of vessels of transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section 102 of this title, bringing an alien to, or providing a means for an alien to come to, the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers. Any such person, owner, master, officer, or agent who fails to comply with the foregoing requirements shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1,000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor, it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, such person, owner, master, officer or agent shall be liable to a penalty of $1,000, which shall be a lien upon the vessel whose owner, master, officer, or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States court."

"(b) Proof that the alien failed to present himself at the time and place designated by the immigration officers shall be prima facie evidence that such alien has landed in the United States at a time or place other than as designated by the immigration officers. (Feb. 5, 1917, c. 29, § 10, 39 Stat. 881; May 26, 1924, c. 190, § 27, 43 Stat. 167.)"

hold the said alien on board at all ports of the United States at which the ship might touch. On June 19, 1932, the vessel arrived at Galveston and, through the negligence of her officers and crew, the alien was allowed to escape and land in the United States, without permission of the immigration authorities and in violation of law. The alien was subsequently arrested in Galveston and deported on another vessel of the same line. The Secretary of Labor was of opinion that it would be impractical and inconvenient to prosecute the matter criminally. Notice was given [fol. 36] the steamship line of the intention of the Government to proceed against it and the Santos Maru for violation of the section. The libel was then filed and the ship attached. Subsequently she was released on bond.

The District Court in dismissing the libel relied on the following authorities. Taylor vs. United States, 207 U. S. 120; Moffitt vs. United States, 128 Fed. 375; Dollar S. S. Line vs. Elting, 51 F. (2d) 1035; The Alfonso XIII, 53 F. (2d) 124; The Habana, 63 F. (2d) 812.

The section relied on to sustain the libel first appeared in its present form in the Act of February 5, 1917, § 10. The amendment of May 26, 1924, § 27, made no substantial change in the law. (T. 8 U. S. C. A. § 146.) Taylor vs. United States was decided in November, 1907, ten years before the present act was adopted, and arose under the immigration act of March 3, 1903, § 18. So far as is necessary to quote, that law provided: "That it shall be the duty of the owners, officers and agents of any vessel bringing an alien to the United States to adopt due precautions to prevent the landing of any such alien from such vessel at any time or place other than that designated by the immigration officers." Violation was punishable by fine and imprisonment. The Taylor case involved a criminal prosecution, based on the desertion of seamen who had been given shore leave. The Supreme Court construed the phrase in the act "bringing an alien to the United States" to mean "transportation with intent to leave in the United States" and held that an intent on the part of the owners and officers of the vessel that the alien transported should enter the United States was necessary before the law was violated, consequently it did not apply to the crew of a vessel.

The present act adds the phrase, "or providing the means for an alien to come to the United States," after the phrase

[fol. 37] "bringing an alien to the United States." The act is somewhat ambiguous an deals with transportation by land as well as by sea but Congress was endeavoring to solve an ever present problem in a practical way. If through passengers on a ship could leave her at a port of the United States at will, that would be an easy way to evade the immigration laws.

The Commissioner General of Immigration, under the direction of the Secretary of Labor, is authorized to adopt rules and regulations for carrying out the provisions of the immigration laws. T. 8 U. S. C. A. § 102. Under that authority he has established a rule that alien through passengers on vessels touching at ports of the United States may land temporarily from the vessel, for the limited time she is in port, without a vised passport, if the examining immigration officer is satisfied he will depart on the ship. If the immigration officer is not so satisfied he shall notify the master of the vessel in writing that the privilege is denied the alien and of the provisions of the law. Rule 3 (6) (H) Im. Rules, Jan. 1, 1930, G. O. 201, Mar. 3, 1933. That procedure was followed in this case and permission to land was denied.

It is usual to permit through passengers to have shore leave, while the vessel is in port, but it is elementary that immigration officers, acting under authority of law, have authority to deny this privilege. It is necessary and proper that in exercising their discretion immigration officers boarding a vessel to examine the persons on her should be guided by uniform rules. The master of the vessel had authority to enforce the order, even by locking up the passenger, if necessary. Thereafter, negligence in allowing the alien to escape was inexcusable. The rule above referred to is reasonable and a valid exercise of the authority vested in the Commissioner General of Immigration.

[fol. 38] We consider that when a vessel arrives at a port of the United States with an alien through passenger on board, who unlawfully lands in the country, the ship has provided a means for the alien to come to the United States, within the meaning of the law. It is not necessary to show that the owners of the ship intended that the alien should land in the United States before the penalty for negligently permitting him to land may be imposed. Under the pres-

ent law, on the facts presented in this case we do not consider that Taylor vs. United States controls.

The other authorities relied on by the District Court are not in point, except the case of The Habana, 63 F. (2d) 812, the ruling in which is directly contrary to our views just expressed. With all due respect, we must decline to follow that case.

Since the statute creates a lien on the vessel for the penalty incurred through negligence of the officers and the action is in rem, no question arises as to the liability of the Santos Maru. The judgment is reversed and the cause remanded with instructions to enter judgment for the United States.

[fol. 39] JUDGMENT

Extract from the Minutes of June 10th, 1936

No. 7978

UNITED STATES OF AMERICA

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU", et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Texas, and was taken under submission by the Court upon the record and briefs on file.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with instructions to enter judgment for the United States.

[fol. 40] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7978

UNITED STATES OF AMERICA, Appellant,

vs.

OSAKA SHOSEN KAISHA LINE, Claimant of the SS. SANTOS MARU, et al., Appellees

MOTION AND ORDER STAYING MANDATE—Filed July 1, 1936

To the Honorable Judges of said Court:

Now comes Osaka Shosen Kaisha Line, claimant of the SS. Santos Maru, appellee in the above entitled and numbered cause, and respectfully shows to this Honorable Court that it intends to file forthwith its petition with the United States Supreme Court for writ of certiorari to this Honorable Court.

Wherefore, appellee Osaka Shosen Kaisha Line prays that the mandate herein be stayed pending the filing and determination of the petition for writ of certiorari.

(Signed) Royston & Rayzor, Attorneys for Appellees, by (Signed) Robt. Eikel.

[fol. 41] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7978

UNITED STATES OF AMERICA, Appellant,

versus

OSAKA SHOSEN KAISHA LINE, Claimant of the Steamship "SANTOS MARU", et al., Appellees

On consideration of the application of the appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of

this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned ecrtificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 1st day of July, 1936.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 42] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 32 to 41 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7978, wherein United States of America is appellant and Osaka Shosen Kaisha Line, Claimant of the Steamship "Santos Maru", et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 31 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the city of New Orleans, Lousiana, in the Fifth Circuit, this 1st day of July, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,764. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 224. Osaka Shosen Kaisha Line, Claimant of the Steamship "Santos Maru," petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed July 24, 1936. Term No. 224, O. T., 1936.

(8320-C)